



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2103

[www.deq.virginia.gov](http://www.deq.virginia.gov)

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

Robert G. Burnley  
Director

Francis L. Daniel  
Regional Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT**

#### **ISSUED TO**

#### **COLONNA'S SHIP YARD, INCORPORATED**

**VPDES Permit No. VA0053813**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and Colonna's Ship Yard, Incorporated, for the purpose of resolving certain violations of environmental law and/or regulations.

#### **SECTION B: Definitions:**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code §10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Colonna" means Colonna's Ship Yard, Incorporated
7. "Regulation" means 9 VAC 25-31-10 *et seq.* - the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

8. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
9. "Permit" means VPDES Permit VA0053813, which became effective July 28, 1999, modified on November 15, 2002, expired on July 28, 2004, reissued August 19, 2004 and expires on August 18, 2009.
10. "TBT wastewater" means process wastewater generated during repair and maintenance of surfaces coated with TBT anti-foulants; precipitation (rainfall/snowmelt) that commingles with process wastewater; sonar dome water containing TBT; any other water from the facility containing TBT, including, but not limited to, waters contaminated with TBT from the treatment system(s) used at the facility.

#### **SECTION C: Finding of Facts and Conclusions of Law**

1. Colonna's Ship Yard, Incorporated, owns and operates a vessel repair and maintenance facility, located at 400 East Indian River Road, Norfolk, Virginia ("Shipyard"). Colonna is subject to VPDES Permit No. VA0053813, which was issued July 28, 1999 and expired on July 28, 2004. The Permit was modified on November 15, 2002, to amend sections of the Permit that address the use of tributyltin ("TBT"). The Permit was re-issued August 19, 2004, with an expiration date of August 18, 2009.
2. The Permit authorizes Colonna to discharge storm water and process wastewater from two floating drydocks identified as outfalls 004 and 008, to the Eastern Branch of the Elizabeth River. This receiving stream segment is considered impaired due to non-attainment of TBT and nutrients, dissolved oxygen, and fecal coliform water quality criteria.
3. On June 25, 2003, Colonna personnel reported to DEQ that a release of untreated TBT contaminated wastewater occurred while maintenance/repair operations were being conducted on the USS Kauffman while drydocked at the Shipyard. On or about May 12, 2003, the contents of the USS Kauffman's sonar dome were pumped onto the drydock floor by Navy personnel aboard the USS Kauffman, reportedly without Colonna's knowledge, which resulted in a discharge (quantity unknown) via outfall 004. Apparently, Navy personnel believed that the sonar dome water did not contain TBT. The laboratory results referred to in paragraph four below indicated that the sonar dome water was contaminated with TBT.
4. On June 25, 2003, Colonna further reported to DEQ that a release of untreated TBT contaminated wastewaters occurred via outfall 004 on June 14, 2003, while Colonna personnel washed out the USS Kauffman's sonar dome contents.

According to Colonna, the sonar dome contained approximately five pounds of sludge, which was sampled on June 14, 2003. The sludge was removed by Colonna after Navy personnel in charge of the overhaul of the USS Kauffman advised Colonna that the USS Kauffman's sonar dome, believed to be the new prototype sonar dome, did not contain TBT. However, Colonna proceeded to sample the sludge on June 14, 2003. The results received on June 24, 2003, indicated the sludge contained a concentration of 327 ug/Kg for TBT. The quantity of released untreated TBT contaminated wastewaters is unknown.

5. The work contract between Colonna and the Navy regarding the USS Kauffman, states that the sonar rubber dome contains organotin antifouling material. The contract further states that disposal of organotin waste material shall be conducted in accordance with federal, state, and local laws, codes, ordinances, and regulations.
6. On July 25, 2003, the USS Kauffman was re-docked at the Shipyard and brought back up for repairs. Colonna outfitted the sonar dome to capture its contents. On July 25, 2003, a sample of the sonar dome contents was sent to the laboratory for analysis. The results indicated that the contents contained TBT at a level of 0.183ug/l. Colonna collected approximately 2,500 gallons of TBT wastewater for treatment at an off site facility prior to disposal.
7. On December 14, 2004, Colonna drydocked the sailing yacht Globanna M at the Shipyard on drydock No. 2, described as outfall 008. Colonna personnel commenced pressure washing the yacht hull to remove marine growth and salts in preparation for re-coating.
8. The specification worksheet for the Globanna M, which was generated by Colonna, and revised November 15, 2004, includes repair and maintenance items to be performed on the yacht. The referenced specification worksheet discloses that the existing hull paint on the Globanna M contained TBT. Furthermore, the specification worksheet outlines procedures for handling TBT wastewater.
9. According to Colonna, the Globanna M specification sheet was not provided to the dayshift paint supervisor prior to commencing hull-washing operations. Once the dayshift paint supervisor became aware that the Globanna M hull was coated with TBT paint, the supervisor took immediate action to stop the hull washing until the wastewater could be captured.
10. By letter dated December 22, 2004, Colonna reported a total discharge of 1013 gallons of untreated TBT wastewater generated during repair and maintenance work on the Globanna M, which commenced December 14, 2004. Of the 1728 gallons of TBT wastewater generated during this operation, approximately 715 gallons of TBT wastewater was collected for treatment and disposal with the

remaining 1013 gallons of untreated TBT wastewater released to state waters. Laboratory analysis results received by Colonna on December 20, 2004, indicated TBT in the wastewater, at a concentration of 59 ug/l, which exceeds the Permit daily maximum concentration effluent limit for TBT of 0.720 ug/l.

11. Part I.A of the Permit specifies a daily maximum concentration effluent limit for TBT of 0.720 ug/l. Colonna violated its Permit by exceeding the effluent limit for TBT daily maximum concentration on December 14, 2004.
12. Part I.E.1 (a) of the modified Permit and Part I.G.1 (a) of the current Permit requires Colonna to notify DEQ prior to TBT use. Colonna was provided information that disclosed the presence of TBT, prior to working on the Globanna M. Colonna violated the Permit requirements by failing to notify DEQ of TBT use prior to working on the Globanna M on December 14, 2004.
13. Part I.E.3 of the modified Permit and Part I.G.3 of the current Permit requires Colonna to sample wastewater to determine whether quantification levels of the wastewater would apply to the annual cumulative mass of TBT, and to collect, and treat TBT contaminated wastewater prior to discharge. Part I.A.1(c) of the Permit requires Colonna to analyze the wastewater each day TBT work is being performed or TBT wastewater is generated. Colonna violated its Permit by failing to sample the effluent generated from the USS Kaufman sonar dome on May 12, 2003 and June 14, 2003 prior to discharge. Colonna violated its Permit by failing to collect and treat TBT contaminated wastewater from the USS Kaufmann on May 12, 2003, and June 14, 2003, prior to discharge. Colonna violated its Permit by failing to collect and treat 1013 gallons of TBT contaminated wastewater generated from the Globanna M on December 14, 2004 prior to discharge.
14. Part II.G of the Permit requires Colonna to report any unauthorized discharges to DEQ immediately upon discovery of the discharge, but in no case later than 24 hours of said discovery. Colonna violated its Permit on December 14, 2004, while working on the Globanna M, by failing to report the unauthorized discharge in accordance with the Permit requirements. On December 23, 2004, DEQ received a letter from Colonna dated December 22, 2004, reporting the unauthorized discharge.
15. On January 29, 2004, DEQ issued Notice of Violation ("NOV") W2004-01-T-0002 to Colonna. The NOV advised Colonna of apparent violations, including failure to notify DEQ prior to TBT use, failure to sample, collect, and treat the wastewater prior to discharge and applicable Permit and Regulatory requirements.
16. On January 24, 2005, DEQ issued NOV W2005-01-T-0004 to Colonna. The NOV advised Colonna of apparent violations, including exceedances of the TBT

daily maximum concentration limits, failure to notify DEQ prior to TBT use, failure to sample, collect, and treat the wastewater prior to discharge and applicable Permit and Regulatory requirements.

#### **SECTION D: Agreement and Order**

Accordingly the State Water Control Board by virtue of the authority granted it by Va. Code § 62.1-44.15(8a) and (8d), orders Colonna, and Colonna agrees to perform the actions described in Appendix A of this Order. In addition, the Board orders Colonna, and Colonna voluntarily agrees to pay a civil charge of \$40,000 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include Colonna's Federal Identification Number and shall reference that payment is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer of Virginia, delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Colonna, for good cause shown by Colonna, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above referenced Notices of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Colonna admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Colonna declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or

law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

5. Failure by Colonna to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. Colonna shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Colonna shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Colonna shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Colonna intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and Colonna. Notwithstanding the foregoing, Colonna agrees to be bound by any compliance date, which precedes the effective date of this Order.

10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Colonna. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Colonna from its obligation to comply with any statute, regulation, Permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
11. By its signature below, Colonna voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of September 28, 2005.

Francis L. Daniel  
Francis L. Daniel, Tidewater Regional Director  
for Robert G. Burnley, Director  
Department of Environmental Quality

Colonna's Ship Yard, Incorporated voluntarily agrees to the issuance of this Order.

By: [Signature]

Date: 6/24/05

Commonwealth of Virginia

City/County of Norfolk

The foregoing document was signed and acknowledged before me this 24th day of

June, 2005, by Thomas W. Godfrey, Jr., who is  
(name)

President / CEO of Colonna's Ship Yard, Incorporated, on behalf of Colonna.  
(title)

[Signature]  
Notary Public

My commission expires: 06/30/2007

## **APPENDIX A**

Colonna shall:

1. Comply with Part I.G.1 (a) of the Permit prior to generating TBT wastewater as defined in Part I.G.1 (b) of the Permit, including any work which requires sampling as required by Part I.A.1 (c) of the Permit regarding outfall(s) 004 and 008.
2. Develop a standard operation and procedure (SOP) manual to incorporate procedural guidelines regarding work associated with TBT. This SOP manual shall include guidance regarding practices necessary to achieve compliance with the Permit, including at a minimum, internal communication guidelines as follows:
  - a) Job specification worksheets will contain all contract information relevant to the actual or potential presence of TBT.
  - b) Shift operators are to receive a copy of each job specification worksheet involving the use of TBT prior to the start of any project.
3. Submit the standard operation and procedures manual to DEQ Tidewater Regional Office, for review and approval, within 90 days of the effective date of this Order.
4. Comply with the provisions of the approved standard operation and procedure manual involving TBT use as a condition of this Order.
5. Provide training to all staff, including supervisory staff, performing work associated with TBT. Training shall include guidance regarding practices necessary to achieve compliance with the Permit, including at a minimum, guidance regarding the current permit requirements relevant to the following:
  - a) Permit limitations and monitoring requirements
  - b) Conditions and requirements for TBT including:
    - i. Notification of TBT use
    - ii. TBT wastewater and quantification
  - c) Unauthorized discharges
  - d) Reports of unauthorized discharges
6. Submit to DEQ Tidewater Regional Office, certification of staff training within 90 days of the effective date of this Order.
7. Mail all submittals and reports required by this Appendix A to:

Francis L. Daniel, Regional Director  
DEQ, Tidewater Regional Office  
5636 Southern Blvd.  
Virginia Beach, VA 23462